Nos. 71-744, 71-745, 71-754 and 71-756

In the Supreme Court of the United States

OCTOBER TERM, 1971

HUGH J. ADDONIZIO, PETITIONER

v.

UNITED STATES OF AMERICA

ANTHONY P. LAMORTE, PETITIONER

v.

UNITED STATES OF AMERICA

RALPH VICARO, PETITIONER

v.

UNITED STATES OF AMERICA

JOSEPH BIANCONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the District of New Jersey, petitioners and one Gordon[1] were convicted on sixty-three counts charging obstruction of commerce in violation of the Hobbs Act, 18 U.S.C. 1951, and one count of conspiring to commit that offense. Petitioners Addonizio and Biancone were sentenced to ten years' imprisonment and a $25,000 fine; petitioner LaMorte was sentenced to ten years' imprisonment and a $10,000 fine; and petitioner Vicaro was sentenced to 12 years' imprisonment and a $10,000 fine. The court of appeals affirmed in an exhaustive opinion (see Pet. in No. 71-744 (Addonizio) App. A 1-50).

The evidence is set forth in full in the opinion of the court of appeals. It shows that between 1964 and 1969 in Newark, New Jersey, contractors engaged in two large scale construction projects for the city of Newark were required to pay kickbacks of ten percent of the payments received from the city. This money went to the Mayor (petitioner Addonizio) and members of the city government (including petitioner LaMorte). Petitioners Biancone and Vicaro were directly involved in extracting cash from the contractors.

1. Each petitioner contends that the trial court erred in refusing a defense request to instruct upon the differences between bribery and extortion, the former not being included in the prohibition of Section 1951. The court refused this instruction but did instruct that the extortionate conduct required under

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[1] Gordon has already filed a petition for a writ of certiorari, No. 71-626, this Term, to which we have filed a response.

18 U.S.C. 1951 did not encompass mere voluntary payments by the victim unaccompanied by any fear of economic loss (Pet. No. 71-744, App. A 49). This was sufficient under the evidence which showed that payments were made in response to extortionate demands (Pet. No. 71-744, App. A 41). At all events, the trial court's instruction adequately informed the jury that involuntariness of the payments was an essential element of the crime.

2. Petitioners LaMorte and Addonizio contend that the *voir dire* in the instant case was incorrectly conducted, because the prospective jurors were not questioned out of the presence of other jurors as to the possible prejudicial effect of pretrial publicity. This contention is dealt with fully by the court below (Pet. No. 71-744, App. A 25-29) and we rely upon its analysis and conclusion rejecting this claim. Petitioner Addonizio's additional arguments regarding the Confrontation Clause and his motion for severance are similarly discussed and properly rejected in the opinion below (see Pet. No. 71-744, App. A 35-37, 19-21). We note further that other recent cases support the position of the court below that, absent a showing of "real prejudice"—which is absent here—a defendant has no right to a severance in order that he may comment on the failure of his co-defendants to take the stand. *United States* v. *Caci*, 401 F. 2d 664, 671-672 (C.A. 2), and cases there cited, certiorari denied, 394 U.S. 917; *United States* v. *De La Cruz Bellinger*, 422 F. 2d 723, 726-727 (C.A. 9), certiorari denied, 398 U.S. 942; see also

United States v. *Rivera* (C.A. 2), petition for a writ of certiorari pending, No. 71-668, this Term.

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1972.

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